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## PLAINTIFF'S TRIAL BRIEF

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18 901(b)(4)

19 901(b)(9)

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671-653-5575

**UNITED STATES DISTRICT COURT**  
**DISTRICT COURT OF GUAM**

Tony H. Ashtiani,  
Plaintiff,

Vs.

Continental Micronesia Inc,  
Dba, Continental Micronesia,  
Continental Airlines,  
Defendant.

) Civil Case No.: 02-00032

## PLAINTIFF'S TRIAL BRIEF

Plaintiff Ashtiani hereby respectfully submits its trial brief in the above-entitled matter per LR 16.7(b) and pursuant to the scheduling order of this Court dated on May 21 2003. Rule 26(a)(3) disclosure shall be made not later than 30 days before trial.

## A. Factual Contention

Tony H. Ashtiani is a Middle eastern from the country of Iran. For 17 years he was a certified Aircraft Mechanic for Continental Airlines and was stationed in (LAX) Los Angeles International Airport as a DC-10 Inspector and was offered company leave of absence to assist Continental Micronesia Inc., (CMI) on their wide body fleets.

On or about mid 1992, Ashtiani transferred from LAX all in pure good faith with clean hands to give his best to Guam maintenance department on DC-10 Fleets, however shortly after his transfer plaintiff noticed that employee of Continental Airlines with higher seniorities were receiving lesser pay of their counter parts of majority at CMI in same job classification. Thus, from the day one transferees were treated less favor with pay differential based on direct evidence, Then came the Maintenance supervisor whom referred to minorities by racial slurs, Ashtiani was referred by James Lujan (Maintenance supervisor) names like "Camel Jockey" on numerous occasion. I brought in food from home like chicken soup and was asked by Lujan if it was camel meat soup, he also kept asking me if I drove my car or my camel to work, and many other similar unpleasant slurs. I will always remember his comments about the

1 time when my spouse was pregnant and he stated to me again in  
2 front of many mechanics if my child was going to look half  
3 palauan and half camel, Lujan as a supervisor in an official  
4 capacity failed to maintain an atmosphere free of racial and  
5 ethnic intimidating and insult rather promoted it as a  
6 maintenance supervisor in major airline.  
7

8  
9 I endured it all and performed my duty on DC-10  
10 fleets, and certainly was not a sideline player on the bench  
11 when it came to fixing planes, Ashtiani among pilots and his  
12 colleagues was known to be knowledgeable mechanic, funny and  
13 well liked by his peers and even after 3 years of plaintiff's  
14 constructive and wrongful termination has passed, Ashtiani's  
15 former co-workers from all walks of life including Local  
16 Guamanians were willing to help my family and I with their  
17 declaration and affidavit against their active employer CMI, I  
18 am grateful to every each and every one of them.  
19

20  
21 In Mid 1998 with new management in place at CMI which  
22 include Mr. Bill Meehan, Mr. James Hammer and Mr. Dixon  
23 Mckinzie, I became subject to severe differential treatment when  
24 my father had passed away and was asked to prove it, plaintiff  
25 was able to provide pictures of funeral services with dates at

1 lower bottom corner while my comparator was not subject to such  
2 treatment.

3  
4 Defendant retaliating against plaintiff for having  
5 complained to management or threatening to file a charge with  
6 EEOC in a grievance filed with Human Resources Director  
7 Mckinzie, whom failed to investigate an individual responsible  
8 for EEO and affirmative action when plaintiff was subject to  
9 disparate treatment.  
10

11  
12 Therefore, as a form of retaliation defendant reserved  
13 plaintiff the dirtiest and most distasteful tasks. Similarly  
14 situated majorities were favored with more pleasant and easier  
15 tasks, and Plaintiff was required to do that work which other  
16 employees declined to perform, and if plaintiff had not  
17 completed the assigned task at the end of the shift, he would be  
18 faced with verbal reprimand or hostile lead man or supervisor  
19 calling minorities worthless, useless, or other non constructive  
20 and degrading statements (Also reference Larry Kimball's  
21 statement) that lead man referred to white guys as "useless" so  
22 that they will not receive adequate training.  
23

24  
25 Upon plaintiff's complaining of discrimination,  
defendant's treatment of plaintiff in every respect became



1 worse. Defendant supervisor had intentionally made working  
2 condition intolerable for plaintiff forcing plaintiff to resign,  
3 if not resigned termination was at sight, because of the  
4 plaintiff's race, national origin, and in retaliation for  
5 threatening to file a charge of discrimination.  
6

7  
8 Defendant states that the problems experienced by  
9 plaintiff while in defendant's employment resulted from a  
10 personal problem that can be proven patently false at trial,  
11 because plaintiff during his years of service is known to worked  
12 very hard for defendant, Ashtiani was and is friendly to every  
13 one including the new management, and in fact plaintiff will  
14 prove based on direct evidence prior to arrival of new  
15 management, Ashtiani had worked over an average of 2800 hours  
16 every year, this is 35% over 40 hours a week. This shows  
17 Continental believed Ashtiani was a skillful and a very good DC-  
18 10 mechanic since they were the ones that asked plaintiff to  
19 always work these extra hours. Ashtiani was happy to come  
20 through parking lot and pick up his time card and punch in and  
21 go right to work.  
22

23  
24 The previous management treated Ashtiani with "respect  
25 and dignity" that he deserved and I for one sincerely did the  
same for all of them, not even once I said no to them when they

1 asked me to come in to change or rig a DC-10 engine or make  
2 repairs to out of service DC-10s because that was my loving job  
3 and I enjoyed watching the finished product of my work lift off  
4 the ground with many passengers to its destination safely. At  
5 times even after I punched out my time card I would wait and  
6 watch the airplane that I worked on taxi in position for take  
7 off and make certain all systems were go.  
8

9           However, when new management which included Meehan,  
10 Hammer, Mckinzie mistrusted me with my late father passing away  
11 and started asking for proof, the most important element in life  
12 "trust" was gone, because I only had one father and he only died  
13 once during my 17 years of my employment.  
14

15           After many forms of retaliation and disparate  
16 treatments Ashtiani a mechanic whom loved to come through the  
17 parking lot and go to work was transformed to an employee that  
18 was uncertain about defendants treatment towards him on daily  
19 basis. I started to trade days off and worked on cars as a  
20 relief from the hostile work environment, trade days were non-  
21 accountable attendances, and it was union option. Supervisor  
22 allowed every one trade with each other, however defendant was  
23 setting me up to trade days off and later used it against me as  
24  
25

1 attendances. This was also entrapment by defendant as part of  
2 defendants long scheme of conspiracy plan.

3  
4 However when management realized that I would not  
5 resign due to many years in service, they attempt to set me up  
6 on delaminated fiberglass panel on DC-10 that flew from Honolulu  
7 to make me look bad. Plaintiff will prove this at trial based on  
8 direct evidence and comparative worth with photographs.

9  
10 While William Herrera, Maintenance Supervisor was  
11 calling me in to the office every week and trying to blame me  
12 for this minor fiber glass panel delaminating as scheme of  
13 conspiracy of constructive discharge, "by end of the day" after  
14 three months, there was not any form of reprimand what so ever,  
15 because Herrera was well aware that I performed my duty with  
16 dedication at all times and I knew the aircraft too well.

17  
18 Once again Mr. Kimball has said it well in his  
19 statement that minorities were always subject to maximum  
20 punishments and were to blame. Nevertheless defendant was in  
21 search of reason to terminate plaintiff because the last DC-10  
22 departure was near and plaintiff skill was no longer needed.

23  
24 Defendant vigorously attempt to push plaintiff out  
25 with 17 years of employment, as my retirement was approaching,

1 during this time I was suffering from massive stress and  
2 depression by defendants continuous harassing and disparate  
3 treatment, while all this was going on, my 3½ year old son  
4 became ill, I was more than happy to attend to him as a relief  
5 from my hostile and stressful working condition created by  
6 defendant six weeks prior to departure of the last DC-10.  
7

8           It is worthy of note that CMI intentionally and  
9 continuously harassed plaintiff even during illness of his son.  
10 I have only one son and he is the light of my eye and there is  
11 nothing that I deprive him as a father; it is the equal love  
12 that I have for both of my children named Matthew and Emily. My  
13 family and I reside in only a 480 Sq/ft container home on my  
14 land, but yet I provide my kids with a good education in a  
15 private school. When Continental terminated me I failed to  
16 provide a concrete home for my family.  
17

18  
19           Plaintiff during the sickness of his child was only  
20 obligated to call his supervisor once per the union contract yet  
21 as responsible individual and a 17 year mechanic I called every  
22 day either to supervisor if available, or left a message with my  
23 co workers. Defendant intentionally ignored my calls and set me  
24 for termination as evident through declarations and affidavit of  
25

1 my co workers for two consecutive days as no call no show on  
2 June 23 and 24 2001.

3  
4 In order to absence any doubt that Herrera was setting  
5 me up to force to resign (constructive discharge) On June 26,  
6 2001 defendant last attempt to make me throw in the towel,  
7 Herrera assigned me to (two) aircrafts by myself which one  
8 required a belly load a stretcher kit which this box is very  
9 heavy for one man, on the third aircraft I was assigned with  
10 other mechanics. Assigning one mechanic to depart two aircrafts  
11 full of passengers is very dangerous and unsafe and Herrera as  
12 supervisor is well aware of the safety guidelines. Herrera that  
13 same evening suspended me then terminated my employment on July  
14 03, 2001. On June 26 2001 Continental Airlines purposely and  
15 intentionally through its supervisor Herrera put the safety of  
16 over 250 passengers in danger. This was done by assigning only  
17 one mechanic Ashtinai to two aircrafts to force him to resign,  
18 There fore, there shall not be a United States of America flag  
19 carrier that jeopardizes the safety of 250 Human lives on board  
20 in exchange for forcing to resigning of an employee. Defendant  
21 is liable for punitive damages for putting those lives in  
22 danger.  
23  
24  
25

1 Plaintiff after his termination received a letter from  
2 CAL regarding his pension that stated only eight (8) years  
3 worked at parent company was counted as vested years and 9 years  
4 employment at CMI will not be counted towards plaintiff  
5 retirement plan. I was given a false promise in written  
6 Agreement that there will not be any lost of benefits during  
7 company leave from CAL. Further more plaintiff was also being  
8 deducted for a Accidental death and dismemberment insurance, and  
9 received an envelope that was intentionally delayed 38 days  
10 while statute of limitation of conversion of that insurance was  
11 31 days and even if, it was not intentionally delayed and was  
12 responded within 31 days, the insurance was not being honored to  
13 residents of Guam and was valid only in 50 states, which was the  
14 reason for intentional delay in the first place.  
15

16  
17 Several months after my termination 9/11 tragedy  
18 occurred and many innocent lives were loss, Plaintiff as a  
19 middle eastern national was very sad and my symphothy is with  
20 those families that loss their love ones on that tragic day. On  
21 or about May 2002 Ron Roberts gave me a statement which later  
22 was transformed into a declaration, in that declaration by  
23 Roberts it was stated that Continental Airlines Director Hammer  
24 in official capacity stated "After the recent event of 9/11 that  
25 Tony Ashtiani would never work around these aircraft again if he

1 could do anything about it because he could not trust people  
2 like Mr. Ashtiani". Again here is a Director that is responsible  
3 for an atmosphere free of racial intimidation. This despicable,  
4 cold, callus, and racial remarks certainly emotionally and  
5 damaging to a mind of a common man that is fighting his wrongful  
6 termination.  
7

8  
9 I was confused and extremely stressed by defendant's  
10 constructive discharge and untruthful promise tampering with my  
11 retirement vested years and my insurance benefits including  
12 Hammers racial remarks. It is worthy of note that plaintiff has  
13 lived and worked in the United States for the last 25 years and  
14 has been a Naturalized United States Citizen for the past 11  
15 years.  
16

17 This Law Suit with eight causes of action brought  
18 forth in United States District Court of Guam is a direct result  
19 of many years of bigotry and discovering immoral activities at  
20 Human Resources Department which were also towards many of  
21 locals ,Pacific islanders and minorities like Ashtiani, whom  
22 never taught that defendant would discharge plaintiff.  
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## B. Legal Brief

This is a civil action brought against Continental Micronesia Inc, and its Houston based parent company Continental Airlines for covering up discrimination in particular here on Guam, where defendant operates a Hub for its profitable and least competitive Asian Pacific Rim flights.

Plaintiff must not only show defendant's reason is a sham, but it is a sham to cover discrimination and despite the smoking gun there is a thick cloud of smoke dissipating from the gun. However that cloud is been hovering for a quite some time in particular of family less, friend less of those with no political ties in Guam targeted by corporation like defendant as evident through pattern of practice exhibited in statistics.

Defendant committing acts under color of laws of United States of America and for conspiring for the purpose of impending and hindering those rights as guaranteed under the Constitution of The United States with intent to deny equal protection of the law and other rights and liberties and for refusing or neglecting to prevent such deprivation and denial of those rights to its Pacific Islanders employees and economic disadvantage minority employees like Ashtiani.



1 Defendant deprived plaintiff of equal protection of  
2 the law in violation of The Fourteen Amendment that controls  
3 due process analysis in non-diversity, and in broader view the  
4 Fifth Amendment is broader than that under the parallel clause  
5 of the Fourteen Amendments. Thus, whereas the Fourteen Amendment  
6 dictates that a defendant gives sufficient notice and adequate  
7 time in preparation and an opportunity to clear one's name.  
8

9  
10 This case involves differential treatment here at CMI  
11 which over the many years has taken its toll, many of the legal  
12 issues are governed by the Civil Rights Act of 1964 as amended  
13 and USCA 42 & 1981, intentional breach of contract pursuant to  
14 an agreement that was between CAL mechanics that were on company  
15 offered leave to assist its sister company due to shortage of  
16 mechanics.  
17

18 Ashtiani through dedication and hard work in his  
19 motion for partial summary judgment proceeding provided numerous  
20 direct evidence of prima facie case of discrimination and  
21 retaliation.  
22

23 Defendant retaliated against plaintiff by intolerable  
24 job assignment during his last two years of his employment  
25 intolerable by any common man. To state prima facie case of  
retaliation under Title VII, plaintiff must show: (1) that he

1 engaged in protected activity, (2) that employer took adverse  
2 action against him, and (3) that causal link exists between  
3 protected activity and employer's adverse action. Civil Rights  
4 Act of 1964, § 701 et seq., as amended.

5  
6 Defendant misrepresentation of facts is a direct  
7 result of defendants failure to provide job performance  
8 evaluation progress and inform plaintiff of areas as where  
9 plaintiff excel and areas where he needed improving, because the  
10 reality of life is that there is no perfect employer nor a  
11 perfect employee and tools are tangible to remedy any alleged  
12 deficiencies, defendant failed to reach for that tool.

13  
14 Defendant made the material misrepresentation and  
15 concealed facts with knowledge of the falsity of the  
16 representation made in exhibits which were notes and emails that  
17 were manufactured in anticipation of EEOC investigation those  
18 emails and memos failed to meet Federal Rules of Evidence Rule  
19 803(6) and 901(b)(4) and 901(b)(9) and defendant boldly  
20 exhibited this conduct during motion for summary judgment in the  
21 United States District Court.

22  
23 To find the defendant liable for breach of the  
24 covenant of good faith and fair dealing, you do not have to find  
25 that the employer intentionally acted in bad faith. However,

1 lack of Bad faith implies dishonesty, fraud, and concealment.  
2 Good faith and fair dealing may be found where an employer acts  
3 unreasonably or without giving equal consideration to the  
4 employee's rights and interest as it gives to its own interest.  
5 The employer is liable for breach of its duty to act in good  
6 faith and fairly if its conduct showed either a lack of good  
7 faith or a lack of fair dealing toward plaintiff. Gruenberg v  
8 Aetna Ins. Co. (1973) 9 Cal.3d 566, 573-574, 108 Cal.Rptr.480  
9

10  
11 Malice and wonton acts by defendant was during  
12 plaintiff's employment but also continued as adverse action  
13 after employee and employment relationship had ended. In  
14 Robinson v. Shell Oil Company, 70 F.3d 325 The Supreme Court  
15 unanimously held that Title VII prohibited respondents from  
16 retaliating against former employees as well as current  
17 employees for participating in any proceeding under Title VII Or  
18 opposing any practice made unlawful by the Act. Thus defendant  
19 retaliated and continues to retaliate.  
20

21 The individual disparate treatment case can be direct  
22 evidence of a discriminatory motive for the adverse action.  
23 However, such cases generally require indirect evidence from  
24 which an interference of discriminatory intent can be drawn,  
25 namely, comparative evidence demonstrating that the treatment of

1 the plaintiff differs from the accorded to other wise "similarly  
2 situated" individuals who are not within the plaintiff's  
3 protected group. Ashtiani will attempt to show that the policy  
4 or practice in question was not applied in the same manner to  
5 other individuals not in their protected class.

6  
7 It shall be an unlawful employment practice for an  
8 employer to discharge any individual, or otherwise to  
9 discriminate against any individual with respect to his  
10 compensation, terms, conditions, or privileges of employment,  
11 because of such individual's race, color, religion, sex, or  
12 national origin; or to limit, segregate, or classify his  
13 employees or applicants for employment in any way which would  
14 deprive or tend to deprive any individual of employment  
15 opportunities or otherwise adversely affect his status as an  
16 employee, because of such individual's race, color,  
17 religion, sex, or national origin. USC 42 SEC. 2000e-2. [Sec703]  
18

19 Plaintiff intends to prove his case by demonstrating  
20 "In order for two or more employees to be considered similarly  
21 situated for purpose of creating inference of disparate  
22 treatment in Title VII case, plaintiff must prove that all  
23 relevant aspects of employment situation are "nearly identical"  
24 to those of non-minority employees who he alleges were treated  
25

1 more favorably". Payne v. Illinois Cent. Gulf R.R., W.D. Tenn.  
2 1987,665 F. Supp. 1308.

3  
4 Lindsey v. Angelina Corp. 508 F. Supp 363,366 pretext  
5 shown by demonstrating that employer acted contrary to its own  
6 policy, Or that defendant departed from its normal policies (in  
7 house policy) which would imply a differential in treatment from  
8 other similarly situated persons. Quoting Texas Dep't of  
9 Community Affair 450 U.S at 256 Defendant proffered reason  
10 "Unworthy of credence".

11  
12 Under Section 102 of the 1991 Civil Rights Act, a  
13 complainant is entitled to punitive damages if he or she  
14 establishes that the employer engaged in discrimination "with  
15 malice or with reckless indifference to the federally protected  
16 rights of an aggrieved individual." ... proof of an after- the-  
17 fact justification would not shield an employer from an order  
18 requiring it to pay punitive damages.

19  
20 Additionally, plaintiffs may recover punitive damages  
21 when "the defendant's conduct is shown to be motivated by evil  
22 motive or intent, or when it involves reckless or callous  
23 indifference to the federally protected rights of others." Smith  
24 v. Wade, 461 U.S. 30, 56 (1983);

1           Garza v. City of Omaha, 814 F.2d 553, 556, 43 EPD Par.  
2 37,072 (8th Cir. 1987) (punitive damages "may be awarded where  
3 the defendant exhibits oppression, malice, gross negligence,  
4 willful or wanton misconduct, or reckless disregard for the  
5 civil rights of the plaintiff").  
6  
7

8                           **C. Attorney Fees.**  
9

10           Plaintiff is appearing as (non-attorney) pro se before  
11 District Court against defendant and is unreasonable to ask for  
12 a fee that one not entitled to that fee.  
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14           Respectfully submitted. This 20<sup>th</sup> day of February, 2004.  
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17                           Tony H. Ashtiani  
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19                           Pro se, plaintiff  
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